

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

CARL STANLEY TURNER

PETITIONER

vs.

Civil Case No. 5:07CV00146 HLJ

LARRY NORRIS, Director,
Arkansas Department of Correction

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge William R. Wilson, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at

the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

DISPOSITION

Now before the court is Respondent's Motion to Dismiss (DE #6) this petition pursuant to 28 U.S.C. § 2254 for a writ of habeas corpus by Carl Stanley Turner, an inmate of the Arkansas Department of Correction. Also pending is Petitioner's Motion to Dismiss (DE #7). Petitioner was convicted by a jury on September 11, 1995,¹ of

¹ Petitioner states the date of conviction was May 15, 1995, but this appears to be an error.

burglary and attempted rape and he was sentenced to fifty years imprisonment. After exhausting state court remedies, he filed his first § 2254 petition in this District, Turner v. Norris, LR-C- 97-791, which this court dismissed on March 30, 1999. The Eighth Circuit Court of Appeals affirmed the dismissal in a per curiam opinion issued on December 7, 1999. Turner v. Norris, No. 99-2278 (8th Cir. Dec. 7, 1999)(per curiam). Thereafter, Petitioner filed two more habeas petitions in this District, both of which were dismissed because he did not first obtain permission from the Eighth Circuit to file a successive petition, as required by 2244(b)(3)(A).

In 1996, Congress significantly amended the federal statutes governing the writ of habeas corpus. The amended version of 28 U.S.C. 2244 provides:

(b)(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

Thus, the court must dismiss the present petition without prejudice and, if he wishes to pursue his claims, Petitioner must file a motion with the Eighth Circuit Court of Appeals, Thomas F. Eagleton Courthouse, 111 South Tenth Street, Room 24.329, St. Louis, Missouri 63102, for an order authorizing this court to consider his claims.

IT IS THEREFORE ORDERED that Respondent's Motion to Dismiss (DE # 6) and Petitioner's Motion to Dismiss (DE #7) be, and they are hereby granted and this petition is hereby dismissed without prejudice.

SO ORDERED this 2nd day of August, 2007.

Henry L. Jones, Jr.
United States Magistrate Judge